IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.11536 M OF 2007

DATE OF DECISION: MARCH 5, 2007

Rajesh Ahuja

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. P. S. Hundal, Advocate,
for the petitioner.

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RANJIT SINGH, J.

This is a second attempt on the part of the petitioner, who is working as a T.V. Reporter, to seek anticipatory bail in a case registered against him. He failed in his first attempt not only before this Court but also before the Hon'ble Supreme Court. The first major hurdle that would stand before him, as such, is regarding the maintainability of second anticipatory bail application. When this aspect was put to the counsel for the petitioner, he took time and has now come to plead that second anticipatory bail application is maintainable.

It is not a matter of dispute that different views are expressed by various Courts as regards the maintainability of second anticipatory bail

application. Full Bench of Calcutta High Court in ***Mava Rani Guin Vs. State of West Bengal***, 2003 (1) RCR (Crl.) 774 (Calcutta) indicated that entertaining a second application for anticipatory bail would amount to review or re-consideration of the earlier order as the accusation remains unchanged. Accordingly, it was held that second application for anticipatory bail, even if new circumstances develops after rejection or disposal of the earlier application, is not maintainable. Similar view is taken in the cases of ***Suresh Chand Vs. State of Rajasthan,*** 2002(2) RCR (Crl.) 6 (Rajasthan), ***Mithu Vs. State of Rajasthan,*** 2000 Cr.L.R. (Raj.) 483 and ***Pawan Kumar Beriwal Vs. State of West Bengal,*** 1998(4) Crimes 246. In Suresh Chand and Mithu's cases (supra), it is held that second bail application is not maintainable or competent. Though contrary view is expressed in some other cases that the second anticipatory bail application would be maintainable but the same is with some rider or the other. In ***Ramgopal Vs. State of Rajasthan,*** 1983 Cr.L.R. (Rajasthan) 217, it was observed that second anticipatory bail application should not be entertained in routine but only if there are some circumstances, which were not before the Court earlier. In ***Nahar Singh Vs. State of Rajasthan,*** 1983 RLR 88, Rajasthan High Court allowed fourth anticipatory bail application as the petitioner was suffering from hyper-tension and chest pain and was hospitalised. Second anticipatory bail application was allowed on medical ground in ***Babu Lal Vs. State of Rajasthan,*** 2004 (3) R.Cr.D. 504 (Rajasthan). Full Bench of Rajasthan High Court in a case ***Ganesh Raj Vs. State of Rajasthan and others,*** 2005 (3)

RCR (Criminal) 30, after referring to different decisions, has held that second or subsequent anticipatory bail application can be filed if there is a change in the fact, situation or in law which require the earlier view being interfered with or where the earlier finding has become obsolete. It would thus be seen that even while holding that the second application for anticipatory bail would be maintainable, the Full Bench of Rajasthan High Court has limited its scope in those cases as enumerated. In this case only it is held that second or subsequent anticipatory bail application cannot be entertained on ground of new circumstances, further developments, different consideration, some more details, new documents or illness of the accused. Thus, the view taken in Nahar Singh's case (supra)that successive anticipatory bail application can be entertained on the ground of sickness has not been approved by Full Bench decision in Ganesh Raj's case (supra). Reference may also be made to a Single Bench decision of Madhya Pradesh High Court in ***Yuvraj Gaud Vs. State of Madhya Pradesh and another,*** 2005 (1) RCR (Criminal) 618 wherein it is held that second application is not barred and is tenable. While so holding, the Court in the said case relied upon ***Babu Singh and others Vs. The State of Uttar Pradesh,*** AIR 1978 Supreme Court 527. Though in this case, the Hon'ble Supreme Court has held that order refusing bail does not bar fresh application on later occasion, giving more details, further developments and different considerations but it may need a notice that this was not a case of anticipatory bail. These observations were made by Hon'ble Supreme Court while dealing with a case at the appellate stage. The Hon'ble Supreme Court observed:-

> "We cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturning an earlier negation."

It may be seen that different Courts have laid down some limitations or the other regarding maintainability of a second anticipatory bail application. This Court in ***Sukhpal Singh Vs. State of Punjab,*** 2005 (1) RCR (Criminal) 638 observed that second bail application would be maintainable where earlier was dismissed for want of prosecution without considering merits of the case. The option of jail or bail has always weighed with the Court while considering regular bail. At the stage of grant of anticipatory bail, the concern always is about the course of investigation. Different considerations would arise while considering bail and anticipatory bail. In Babu Singh's case (supra), the Hon'ble Supreme court examined in detail the consideration for grant of bail. After making reference to various aspects required to be taken into consideration while granting or denying it, the Court laid down some basic principles in this regard. These generally are nature of charge/offence, likely punishment and effect of such an order on the cause of justice.

There is no dispute that second bail application is not barred but the courts are entertaining second bail application only due to change in facts than the earlier position. Some of such considerations may not arise while entertaining prayer for second anticipatory bail. As can be noticed, the views of different courts are that right of second anticipatory bail is of restrictive availability. On

the other hand, it also cannot be said that in no case, second anticipatory bail can be entertained and saying so may amount to putting some fetters on the powers of the Courts. However, to hold that second or successive plea of anticipatory bail can be entertained unrestricted of any limits may lead to filing of one petition after another which is also not envisaged. It would be, thus, reasonable to say that though second anticipatory bail may be entertained but it has to be on very limited grounds. It would be noticeable that while holding that the second anticipatory bail application can be entertained to limited extent, the Full Bench of Rajasthan High Court in Ganesh Raj's case (supra) went on to hold that under no circumstances, the second or successive anticipatory bail application shall be entertained by a Sessions Judge/Additional Sessions Judge. It may require consideration if there would be any valid justification to say that Sessions Court would not have power but the High Court would be entitled to entertain second anticipatory bail application when the powers so exercised by the High Court as well as by the Sessions Court emanates from the same provisions i.e. Section 438 Cr.P.C. Even in Yuvraj Gaud's case (supra) , it is observed that it shall be open to the Court to reject the second bail application summarily on the ground that second petition is nothing but a repetition of the earlier petitioner and no new grounds are disclosed in the second petition. The gist of the divergent views appear to be that second anticipatory bail application is not to be entertained in routine but can be so entertained or is competent on a very limited grounds, which may be a change in facts, situation or some law etc. Where earlier prayer for anticipatory bail was got dismissed as

withdrawn without permission to file a fresh one, then entertaining of second application would obviously be aimed at seeking review of the earlier decision, which may not be possible, considering the provisions of procedural Code.

As noticed in order order dated 13.12.2006, the petitioner had entered into a girls school where he started interviewing the girls without any permission. He also went to the office of Principal of the School and started questioning her in regard to complaint made by one of a teacher. He was also accompanied by some other persons, statedly Press Reporters, who did not disclose their identities. Allegations of black-mail and demand of money are also made against the petitioner, which were conveyed to the Principal of the School through her son. Noticing all the arguments raised on behalf of the petitioner, prayer of the petitioner for anticipatory bail was rejected. Neither the counsel appearing for the petitioner in earlier bail petition nor the present changed counsel was able to justify the action/conduct of the petitioner in illegally barging into the school premises and interviewing the girl students which he recorded on T.V. Camera. The stand projected in the petition that this was done by the petitioner as there was some complaint against the Principal was noticed while rejecting his earlier bail petition. Still, the petitioner has attempted to make submissions on the same line but could not offer any justification on his part to assume this responsibility of acting as a `***Robinhood'.***

The counsel then attempted to point out some change in circumstances and facts to say that grant of anticipatory bail to the petitioner can be considered on these grounds. The counsel would

first submit that it could not be pointed out earlier that the petitioner was a correspondent of NRI T.V. and if the police had investigated this aspect, they would have certainly found that the petitioner is such an employee. Learned counsel had not earlier appeared for the petitioner, and as such, he is not properly informed in this regard. This aspect of the matter was addressed and taken into consideration, while deciding the earlier petition and even opportunity was given to the petitioner to place on record relevant documents. Pursuant thereto, the petitioner had placed on record his identity card, which is even now annexed with the present petition as Annexure P-10. The petitioner has now placed on record, Annexure P-8, which is a letter dated 6.2.2006 addressed to D.P.R.O., Sonepat, to the effect that the petitioner is working as a Reporter from Sonepat and is authorised to collect events relating to news etc. This was so pointed out while making submissions in the earlier petition. All these documents would only indicate that he is detailed as one of the person to collect news on behalf of said T.V. Channel and would not indicate that he is a duly appointed employee of the T.V. Channel or a credited news man. Even if he was so, still he would not have any licence to act in the manner he did.

The counsel now submits that report under Section 173 Cr.P.C. is filed in the Court and, therefore, there would not be any need for custodial interrogation of the petitioner. This aspect of the matter may not speak well about the conduct of the police. The police had vehemently opposed the prayer of anticipatory bail filed by the petitioner on the ground that he was needed for custodial interrogation. Prayer of the petitioner for anticipatory bail was

accordingly rejected. The Hon'ble Supreme Court also declined to grant pre-arrest bail to him. Still, the police did not consider it appropriate to take the petitioner in custody and has filed the challan, as disclosed in the present petition. There are other co-accused and challan in their cases may have been submitted. Be that as it may, but now it would reveal that the petitioner now cannot bye-pass regular court. He would now have to seek bail from the regular court. All aspects in regard to the role and responsibility of the petitioner would be seen by the trial Court. In this regard, reference can be made to cases of ***Salauddin Abdulsamad Shaikh Vs. State of Maharashtra,*** (1996) 1 SCC 667 and ***K.L.Verma Vs. State and another,*** (1998) 9 Supreme Court Cases 348, which were approved in ***Adri Dharan Das Vs. State of W.B.,*** (2005) 4 Supreme Court Cases 303. It has been held in these cases that anticipatory bail order should be for a limited duration only and ordinarily on the expiry of that duration or extended duration, the Court granting anticipatory bail should leave it to the regular Court to deal with the matter on an appreciation of evidence placed before it. In K.L.Verma's case (supra), it has been held that anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. It is, thus, clear that anticipatory bail has to be for a limited duration and that the regular Court cannot be bye-passed. It will be inappropriate and highly improper on the part of this Court to re-consider or review the earlier order, as the prayer for anticipatory bail made by the petitioner has been rejected by the Hon'ble Supreme Court. No case for grant

of anticipatory bail to the petitioner is made out.

The present petition is accordingly dismissed.

March 05, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**